Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers	)))))	CG Docket No. 02-386

COMMENTS OF AMERICATEL CORPORATION

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Americatel Corporation ("Americatel"),[1] through its attorneys, respectfully files its comments in the above-captioned matter with the Federal Communications Commission ("FCC" or "Commission").[2]

I. Introduction and Summary

On March 25, 2003, the Commission released an *NPRM* in this proceeding that requests comments on the question of "whether the Commission should impose mandatory minimum CARE [Customer Account Record Exchange] obligations on all local and interexchange carriers."[3] "The CARE system provides a uniform method for the exchange of

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[1] Americatel, a Delaware corporation that is a subsidiary of ENTEL Chile, is a common carrier providing domestic and international telecommunications services. ENTEL Chile is the largest provider of long distance services in Chile. Americatel also operates as an Internet Service Provider ("ISP"). Americatel specializes in serving Hispanic communities throughout the United States, offering presubscribed (1+), dial-around, and prepaid long distance services, as well as private line and other high-speed services to its business customers. The majority of traffic carried by Americatel is dial-around in nature.

[2] *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, Notice of Proposed Rulemaking, CG Docket No. 02-386, FCC 04-50 (rel. March 25, 2004) ("*NPRM*").

[3] *Id*., at ¶1.

certain information by interexchange carriers and local exchange carriers ("LECs"). CARE allows these carriers to exchange the data necessary to establish and maintain customer accounts, and to execute and confirm customer orders and customer transfers from one long distance carrier to another."[4]

The *NPRM* also seeks comment on whether the Commission should require the telecommunications industry ("Industry") to develop a nationwide "line-level database as a comprehensive solution to current data exchange problems in the industry," as requested by Americatel.[5] Americatel previously sought this specific relief because the mere adoption of mandatory CARE standards—a step that would improve the ability for carriers to bill their charges for presubscribed long distance traffic promptly and accurately, "do[es] not address additional problems associated with dial-around traffic, which is subject to greater collection risks and fraud because the serving carrier does not have any credit information about the customer."[6]

Americatel submits that the Commission should adopt minimum CARE standards for mandatory use by all carriers, with the possible exception of rural carriers. A competitive market cannot exist where carriers cannot bill for the services that they provide to end user customers. Timely and accurate billing requires a reasonable degree of uniformity and consistency for customer billing information. Since the common carrier telecommunications

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[4] *Id*., at ¶2.

[5] *Id*., at ¶¶17, 19.

[6] *Id*., at ¶17.

business is "affected with the public interest,"[7] carriers must expect to bear reasonable burdens that address public interest requirements, such as the requirement to furnish timely and accurate customer billing information to other carriers. Americatel believes that the minimum CARE standards proposed by AT&T, MCI and Sprint are generally reasonable and, therefore, should be adopted by the Commission, provided, however, that the Commission should also require that CARE requirements include an Operating Carrier Number ("OCN") for both facilities-based and non-facilities-based LECs. In the alternative, a separate identification mechanism (*i.e.,* code) could be used to identify individual non-facilities-based competitive LECs ("CLECs").

Unless the FCC is willing to see the dial-around Industry disappear and consumers lose a money-saving option, the FCC must require the Industry to finalize standards for, and implement, a mandatory line-level database solution by a date certain. By failing to address the need for a line-level database solution, the Commission is treating dial-around traffic as an unwanted step-child, especially since the Commission has regularly assisted other Industry segments when they have faced cost recovery or billing problems. Accordingly, the FCC should direct the Industry to adopt a line-level database solution by no later than July 1, 2005.

II. The Commission Should Adopt Minimum CARE Standards

A. A Competitive Market Cannot Exist Where Carriers Cannot Bill for the Services that They Provide to End User Customers

Americatel has supported and will continue to support the adoption of mandatory minimum CARE standards.[8] Vigorous competition—the keystone of the Communications Act

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[7] *See, generally., Nebbia v. New York*, 291 U.S. 503 (1934).

[8] *E.g.,* Comments of Americatel, filed January 21, 2003, at 2.

of 1934, as amended ("Act"),—depends on all carriers having sufficient information to bill for their services on an accurate and timely basis. Carriers cannot be expected to provide services to customers without charge. Likewise, customers deserve to receive accurate and timely invoices for their calls.

Unless a single carrier can provide end-to-end service from the calling party to the called party, such carrier is dependent, at least to some degree, on information that is in the sole possession of other carriers. Just as every carrier has an obligation to interconnect with all other carriers, on a direct or indirect basis, and to accept from and deliver traffic to other carriers in a manner that is transparent to customers, so too every carrier has a duty to provide accurate and timely customer billing information to other carriers. In a competitive, multi-carrier market, no carrier can be permitted to take the position that it can elect not to cooperate with other carriers in the exchange of traffic and the provision of necessary customer billing information to those other carriers.

B. Timely and Accurate Billing Requires a Reasonable Degree of Uniformity and Consistency with Respect to Customer Billing Information

Similarly, for carriers to be able to bill their customers for services rendered, there needs to be a reasonable degree of uniformity and consistency among carriers with respect to such customer billing information.[9] No individual carrier can be permitted to decide that it will not follow basic industry standards for developing and furnishing this billing information. For

[9] Americatel, like most other carriers, agrees that the appropriate forum for determining the details of what customer billing information, including the standards for uniformity and consistency, should be developed by the Industry, through the Alliance for Telecommunications Industry Solutions ("ATIS") and, in this case, its Ordering and Billing Forum ("OBF"). The OBF is the proper place, for example, for the Industry to balance the needs and limited resources of small rural

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example, it would be an unreasonable practice in violation of Section 201 of the Act for one carrier to develop its own telephone numbering scheme, rather than utilizing the Industry standard, the North American Numbering Plan ("NANP"). Assume, for illustration, that Carrier A decides to assign Area Codes on an alpha-numeric basis, rather than as required by the NAMP. Carrier A's numbering plan might treat a call from 310-555-1234 to 202-418-2000 as 5DK8-555-1234 to L78F-418-2000. All would readily agree that a telephone number in the format 5DK8-555-1234 is meaningless to all carriers except Carrier A. Americatel submits, therefore, that the FCC would have the authority and, indeed, the duty to declare Carrier A's use of its own telephone numbering system in concert with other carriers an unreasonable (and, hence, unlawful) practice.

Similarly, it would be unreasonable and unlawful for a carrier to decide to omit portions of the calling party's telephone number when transmitting such information to other carriers. For example, Carrier B, which operates only within a single Area Code (402, for example), might decide not to populate the Area Code field in a billing record that is transmitted to other carriers. Thus, rather than transmit 402-555-6789 to other carriers, Carrier B might simply provide 555-6789 as the calling number. It is very conceivable that other carriers would not find the originating telephone number 555-6789 useful when ten-digit originating telephone numbers are the norm among carriers. The seamless interchange and delivery of traffic requires a minimum level of uniformity in carriers' business practices.

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carriers against national needs to create less burdensome obligations, as appropriate, for rural carriers.

The very same logic applies to mandatory CARE standards. The Industry has determined the minimum information, both in terms of substance and format, that must be provided by one carrier to other carriers for the latter to be able to bill for presubscribed long distance traffic. Now it is the FCC's duty to declare that every carrier, unless specifically exempted by rule, order or waiver, must comply with those standards.

Moreover, the FCC should also declare that any carrier which consistently fails to comply with these basic standards, including in those situations where a carrier fails to follow standard formats or populate mandatory fields for the overwhelming majority of its traffic, can be liable to other carriers in damages in the amount of revenues that could not be billed because of the first carrier's failure to follow applicable standards.[10] Likewise, a carrier that falsifies, deletes, adds or otherwise alters basic billing data in an effort to reduce or avoid paying applicable charges to other carriers or otherwise to defraud those carriers, should be held liable to such other carriers for their losses. Indeed, the FCC should be willing to strip "rogue" carriers of their authorizations to provide service under extreme circumstances.

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[10] Americatel is not suggesting that it is always possible for carriers to provide fully accurate information for each and every call. Mistakes do happen. Unforeseen circumstances can intervene. However, it is unreasonable for carriers to fail to make best efforts to prevent the occurrence of mistakes and minimize the occurrence of the "unforeseeable." For example, the former Bell System had a written practice that prohibited the Bell Operating Companies ("BOCs") from housing their erasure machines for magnetic tapes used to record long distance calls in the same room where those tapes were recorded and processed for billing. Suffice to say that AT&T did not find it acceptable for a BOC to have accidentally erased its basic long distance call records for an entire day simply because unprocessed billing tapes were stored in the same room as the tape erasure machine and were mistakenly erased before processing, as occurred in the late 1970s. Carriers must take reasonable measures to recover from failures and even disasters. Carriers that fail to make reasonable and good faith efforts in these areas should be made accountable to other carriers when those failures cause billing losses for those other carriers.

C. <u>The Common Carrier Business is "Affected with the Public Interest" and, Therefore, Carries with it Certain Obligations, Including an Obligation to Cooperate with Other Carriers</u>

Several commenting parties argued that it would be too burdensome for carriers to be required to comply with minimum CARE standards.[11] In this instance, that argument is flawed. The telecommunications business is a "burdened" business by its very nature. It is burdensome for local carriers to provide access to 911 emergency calling services. Carriers could save money if they did not have to provide specialized connections to Public Service Answering Points ("PSAPs"). However, society and the Industry regard the provision of 911 Service as critical to the public interest and, therefore, place a priority on that service.

It was also burdensome for local carriers to provide their end user customers with equal access to long distance carriers, beginning in the mid-1980s. Many LECs, both large and small, were required to replace many of their central office switches due, in significant part, to the regulatory mandate to offer equal access services that could not be provided with certain types of central office switches, *e.g.*, Step-by-Step, Cross-Bar and other electromechanical switches, as well as certain electronic switches, *e.g.,* 2BESS switches. ILECs, in many instances, were burdened with replacing otherwise perfectly serviceable switches in many markets because of equal access regulatory requirements.

Likewise, long distance carriers bear regulatory burdens. Long distance carriers are required, for example, to make financial contributions to state and federal universal service funds that mainly support LECs and their end user customers. This obligation creates a financial

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[11] *See, e.g.,* Reply Comments of Cox Communications, filed February 4, 2003, at 2.

burden for long distance carriers since they must either pass the costs along to their customers in the form of higher long distance bills or absorb the costs themselves, which reduces earnings levels. Long distance carriers also are burdened with the obligation to pass Calling Party Number ("CPN") information to LECs. Long distance networks would be less expensive to operate if this obligation did not exist.

The point is that the telecommunications business is, indeed, one "affected with the public interest." As such, there are various obligations associated with this type of business that carriers must shoulder even when those obligations cause carriers to incur additional costs, because to shun those obligations, would be to harm the public interest. While the FCC must always be mindful of the new costs imposed by adding obligations to carriers and should not impose new regulatory requirements willy-nilly, there are simply instances where the FCC must require all carriers to meet new essential obligations. The provision of accurate, usable, uniform and timely CARE information to other carriers so that those carriers can bill their end user customers is one of those public interest obligations that cannot be avoided.

Therefore, with the exception of small rural ILECs, which often lack both the resources to provide the additional information and generally serve only a limited number of customers, the arguments about the burdens of satisfying minimum CARE standards are hollow. The Commission should, therefore, ignore them.

D. The Proposed CARE Standards Should be Adopted with Specific Identifiers for Non-Facilities-Based LECs

AT&T, MCI and Sprint made specific recommendations to the FCC concerning "a Minimum CARE Standard composed of a subset of the existing OBF CARE/Industry Support

Interface guideline Transaction Code Status Indicators (TCSIs)."[12] Americatel supports AT&T, MCI and Sprint's recommendation with one caveat. In order to bill for its dial-around services, Americatel must know the identity of the serving LEC, whether or not it operates its own network or simply resells the network of another carrier. Therefore, minimum CARE standards must include the OCN for every LEC, including non-facilities-based LECs. Alternatively, a different, but still unique identification code for each non-facilities-based LEC should be required as a part of minimum CARE standards that must be used by all carriers.

III. Unless the FCC Is Willing to See the Dial-Around Industry Disappear and Consumers Lose a Money-Saving Option, the FCC Must Require the Industry to Finalize Standards for, and Implement, a Mandatory Line-Level Database Solution by a Date Certain

A. The Inability of Americatel to Obtain Timely and Accurate Customer Billing Information Has Hurt Its Operations

Americatel previously demonstrated to the Commission the problems faced by dial-around carriers in billing their calls due to the failure or even refusal of various competitive CLECs to provide Billing Name and Address ("BNA") Service.[13] In response, the Commission stated that Section 64.1201 of its rules (47 C.F. R. §64.1201) makes no distinctions between incumbent local exchange carriers ("ILECs") and CLECs. Thus, the FCC affirmed Americatel's contention that all CLECs have an obligation to provide BNA services to other carriers, including Americatel, upon request.[14]

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[12] *NPRM*, at ¶11.

[13] Americatel's Reply Comments, filed February 4, 2003, *passim*.

[14] *NPRM*, at ¶9.

Americatel also requested that the Commission require all carriers to provide information about the identity of any customer's serving LEC. Americatel recommended that this task be achieved through the establishment of a national line-level database by a date certain and that the Commission direct the Industry to participate in the database.[15]

The inability of dial-around carriers to bill for all of their calls is taking a severe financial toll on that segment of the Industry and, ultimately, the continued availability of dial-around services as another lower-cost alternative for consumers. Americatel's unbillable calls for 2003 still amounted to $4.7 million, despite Americatel's aggressive call-blocking efforts to customers who, with access to accurate and current billing information, Americatel would have been able to retain and continue to serve. These foregone revenues have hurt Americatel's operations.

B. Dial-Around Traffic Has Been Treated as an Unwanted Step-Child by the Commission

By failing to require that the Industry establish and implement a line-level database solution by a date certain, the FCC is treating dial-around traffic as an unwanted step-child. The problem of unbillable dial-around calls due to a lack of accurate and timely customer billing information has been left to the dial-around carriers. As previously noted by Americatel, unbillable calls amounted to a full six percent of Americatel's 2001 revenues.[16]

Americatel submits that, if other types of carriers had been experiencing a six-percent unbillable rate for their services or had been forced to block service to potential

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[15] Letter from Robert H. Jackson, Counsel for Americatel, to Marlene H. Dortch, FCC, dated February 3, 2004, at 4-5.

[16] Americatel's Petition for Declaratory Ruling, filed September 5, 2002, at 7.

customers, the Commission would most likely have acted to require the Industry to develop and implement an appropriate solution. How much is 6% of carriers' revenues? The following table displays total 2002 revenues for several of the largest LECs and also calculates six percent of those revenues.

Local Carrier	2002 Revenues (000)	6% of Revenues (000)
Alltel	957,341	57,440
BellSouth	17,196,128	1,031,768
Cincinnati Bell	848,483	50,909
Qwest	11,151,966	669,118
SBC	37,069,998	2,224,200
Sprint Local	5,252,028	315,122
Verizon	38,312,840	2,298,770
Total	110,788,784	6,647,327
Source: 2002 Statistics of Communications Common Carriers, Table 1.2		

If these large and mid-sized carriers were facing situations where their unbillable (as opposed to uncollectible) calls had reached six percent of revenues, a hue and cry would quickly overwhelm Washington, D.C. at levels that would drown out the mating calls of the billions and billions of male, 17-Year Cicadas that are now "serenading" the Nation's Capital. Were these LECs unable to bill for their services at the same level faced by Americatel in 2001, it is all but certain that the Commission would, properly, have granted some type of relief to the LECs.

A review of the FCC's orders over time demonstrate that it has not turned a cold shoulder to the other types of carriers when they experienced new financial risks or could not bill for their services. For example, when the LECs faced new costs for providing equal access to long distance carriers and for reconfiguring their networks to conform to LATA boundaries, the FCC promptly established a Federal-State Joint Board and directed it to develop a plan for LECs to recover those additional new costs.[17] The Joint Board made recommendations for the recovery of those new costs, which were then adopted by the FCC.[18] Under the FCC's plan, the LECs' equal access and network reconfiguration costs were fully recovered by December 31, 1993.[19] Likewise, the FCC took action that permitted LECs to recover their additional costs for providing local number portability.[20] They have been permitted to bill both carriers and end users for the costs of porting numbers and performing database queries and, therefore, appear to be recovering their costs.

The Commission has also addressed situations where LECs might not be permitted to bill for all of their services. For example, when the LECs introduced 800 number portability through a database system, the LECs identified and the Commission recognized situations where LECs would not be able to bill for all database queries performed by each LEC for the traffic. "The unbillable queries occur, for example, when the regional data base (*sic*) operator does not provide a valid carrier identification code."[21] The Commission's reaction to

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17 *See, MTS and WATS Market Structure;* and *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board,* Order Inviting Comments, 49 Fed. Reg. 18746 (1984).

18 *Id*., Report & Order, 51 Fed. Reg. 2704 (1986) (subsequent history omitted).

19 *See 1994 Annual Access Tariff Filings Nevada Bell; Pacific Bell; Rochester Telephone Corporation; Vista Telephone Companies*, Memorandum Opinion & Order Suspending Rates, 9 FCC Rcd 3519 (1994).

20 *See, e.g., Long-Term Number Portability Tariff Filings; U S WEST Communications, Inc.*, Memorandum Opinion & Order, 14 FCC Rcd 11983 (1999).

21 *800 Data Base Access Tariffs; The 800 Service Management System Tariff;* and *Provision of 800 Services*, Report & Order, 11 FCC Rcd 15227, at ¶205 (1996).

the problem was as follows: "We recognize that unbillable queries constitute a genuine cost to the rate-of-return LECs that they should be allowed to recover in their rates."[22] Thus, smaller LECs were held harmless financially by FCC action in response to their request for relief.

Similarly, long distance carriers faced a situation where they could not bill for all of their calling card calls that were dialed on a "zero-plus" basis because AT&T, which had previously had a monopoly on most interLATA calling card calls that were placed from payphones, continued to instruct its customers to dial calling cards on a "zero-plus" basis even after payphones began to be presubscribed to other long distance carriers.[23] For example, an AT&T customer might place a calling-card call from a payphone that was presubscribed to Sprint. In such instance, the consumer could complete her call (thinking that she had used AT&T's network), but Sprint, which actually incurred the operating and access charge costs for handling the consumer's call, would not have had any way of identifying and, thus, billing the consumer.

The FCC did not shrug its shoulders and leave all non-AT&T carriers with the costs of unbillable calls. Rather, the FCC decided that AT&T had to incur the costs associated with changing the way it instructed its customers to place calling card calls. The Commission ordered AT&T to: "(1) educate its cardholders to check payphone signage and to use 0+ access only at phones identified as presubscribed to AT&T; (2) provide clear and accurate access code

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22 *Id.*, at ¶209.

23 *Billed Party Preference for 0+ InterLATA Calls*, Report & Order and Request for Supplemental Comment, 7 FCC Rcd 7714, at ¶25 (1992).

dialing instructions on every proprietary [calling] card issued; and (3) make its 800 access code number easier to use."[24]

These are but several examples of situations where the FCC exercised its regulatory authority to ensure that carriers could recover their costs for providing service and bill their customers for services rendered. Yet, when it comes to dial-around carriers, the Commission would prefer not to address the need for a line-level database solution. Such a solution must be ordered unless the Commission is willing to see the dial-around Industry whither away while consumers' choices become limited only to selecting from several bundled service packages, rather than also including the option of creating their own packages of services from an number of carriers. Such a result is simply not in the public interest.

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[24] *Id.*, at ¶37.

IV. Conclusion

For the reasons set forth above, the Commission should adopt minimum CARE standards for all carriers, with the exception of rural ILECs; put carriers on notice that they may be held liable for damages to other carriers for failing to meet those standards on a reasonable basis; and direct the Industry to adopt a line-level database solution by no later than July 1, 2005.

Respectfully submitted,
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